

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**NOTICE**

October 9, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 97-2340-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JASON W. JOHNSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Juneau County:  
JOHN W. BRADY, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Counsel for Jason W. Johnson has filed a no merit report pursuant to RULE 809.32, STATS. Johnson has not responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. We therefore affirm.

Johnson admitted becoming enraged at another man and using a shotgun to shoot him in the foot. He was attempting to reload and fire again when he was disarmed by his victim and a woman who was present. Also present in the room when the shooting took place were two young children.

Consequently, the State charged Johnson with great bodily harm with intent to cause great bodily harm, § 940.19(5), STATS.; first-degree reckless injury, § 940.23(1), STATS.; and three counts of recklessly endangering the safety of another, § 941.30(1), STATS. Pursuant to a plea bargain, Johnson pleaded no contest to first-degree reckless injury, and two counts of recklessly endangering the safety of another. In exchange for his plea, the State dismissed the remaining two charges. The trial court sentenced Johnson to a five-year prison term on the first-degree reckless injury charge, and two concurrent six-year probation terms for the remaining two charges.

Johnson cannot succeed on a motion to withdraw his plea because he knowingly and voluntarily pleaded no contest. Before accepting the plea, the court established that Johnson understood and waived his rights to a jury trial, confrontation and protection against self-incrimination. The court adequately informed Johnson of the elements of the crimes charged and the potential punishments. The court also properly inquired about Johnson's ability to understand the proceedings and the record independently establishes that he understood the proceedings. The State did not improperly induce Johnson to plead guilty and Johnson exercised his free will in accepting the plea bargain. Finally, the court determined that an adequate factual basis existed for the charges. The court therefore complied with the requirements set forth in *State v. Bangert*, 131 Wis.2d 246, 261-62, 389 N.W.2d 12, 21 (1986), to ensure a knowing and voluntary plea.

The trial court properly exercised its sentencing discretion. The trial court properly exercises its discretion if the sentence is not excessive and the court relies on proper factors. *State v. Krueger*, 119 Wis.2d 327, 336-37, 351 N.W.2d 738, 743 (1984). We presume that the trial court acted properly in sentencing the defendant, and the burden is on the defendant to prove otherwise. *Id.* In sentencing Johnson, the court considered the serious nature of his crimes, and the fact that only through good fortune was no one killed or seriously injured, including the two young children on the scene. As mitigating factors, the court considered the absence of any prior record and Johnson's stable employment record. Johnson faced maximum terms totaling twenty-years in prison. He cannot reasonably argue, under the circumstances, that a five-year term was excessive. Additionally, the court not only relied on proper factors when it imposed sentence, but the court fully explained its reliance on them at the sentencing hearing.

Appellate counsel also identifies as a potential issue whether Johnson knowingly and voluntarily waived his right to a preliminary hearing. We concur with counsel's analysis that Johnson could not succeed in an appeal on that issue.

Our independent review of the record discloses no other potentially meritorious issues. Any further proceedings would therefore be frivolous and without arguable merit. Accordingly, we affirm the judgment of conviction and relieve Johnson's counsel of any further representation of him in this appeal.

*By the Court.*—Judgment affirmed.

